In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 296

C. PARKE MASTERSON and JOSEPH LAVORATA,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners seek review of the order of the Court of Appeals for the Second Circuit, entered May 9, 1966, dismissing their appeal from an order of the district court denying their motion to suppress evidence filed after indictment but before trial. The petition for a writ of certiorari, filed June 28, 1966, is out of time under Rule 22-2 of the Rules of this Court.

In any event, the only issue at this stage is the appealability of an order denying a motion to suppress

evidence filed after indictment but before trial. The non-appealability of such an order has been established by a long line of decisions from *Cogen* v. *United States*, 278 U.S. 221 to *DiBella* v. *United States*, 369 U.S. 121. Petitioners will be tried on the indictment, a stay having been denied by the Court of Appeals and by two Justices of this Court (Mr. Justice Harlan on May 19, 1966 and Mr. Justice Black on June 29, 1966). If petitioners are convicted, review of the denial of their motion to suppress may be had on direct appeal from the conviction.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

JULY 1966.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1966 224608 22